

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Cascade Natural Gas Corporation, Mr. Paul
McConkey and Ms. Natacha Sesko.

AGREED ORDER

**Remedial Investigation/Feasibility Study
and Draft Cleanup Action Plan – Old
Bremerton Gasworks and Sesko Property
Site**

No. DE-10TCPHQ-7721

TO: Cascade Natural Gas Corporation
Attention: Mr. Daniel Meredith
222 Fairview Avenue North
Seattle, Washington 98101

Ms. Natacha Sesko
3536 West Arsenal Way
Bremerton, Washington 98312

Mr. Paul McConkey
Penn Plaza Industrial Park
1500 Thompson Avenue
Bremerton, Washington 98337

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology), Cascade Natural Gas Corporation (CNGC), Mr. Paul McConkey and Ms. Natacha Sesko under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires CNGC, Paul McConkey and Natacha Sesko to conduct a Remedial Investigation and Feasibility Study per WAC 173-340-350 and develop a draft Cleanup Action Plan per WAC 173-340-350 through 173-340-380 addressing both upland and in-water (i.e., adjacent marine sediment) contamination for the Site. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. CNGC, Paul McConkey and Natacha Sesko, agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter CNGC's, Paul McConkey's and Natacha Sesko's responsibility under this Order. CNGC, Paul McConkey and Natacha Sesko shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site (or Facility) is referred to as Old Bremerton Gas Works and Sesko Property (the Site), and is generally located at 1725 Pennsylvania Avenue, Bremerton, Washington 98310 (Kitsap County Assessor's Parcel Numbers: 3711-000-001-0409, 3711-000-001-0607 and 3741-000-022-0101 and the associated impacted aquatic lands). The Site is owned by the McConkey, Paul and Margaret (parcel numbers 3711-000-001-0409 and 3711-000-0607) and Natacha Sesko (parcel number 3711-000-022-0101). A number of warehouse buildings are present on the Site, and the South McConkey Property (parcel number 3711-000-001-0607) is being used for light industrial purposes. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site and is not limited by property boundaries. The Site includes areas where hazardous substances have been deposited, disposed of, placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is more particularly described in **Exhibit A** to this Order, which includes a general site location map and a detailed site diagram. The Site includes both upland and in-water areas (i.e., adjacent marine sediment) as defined below. The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to the State of Washington, Department of Ecology CNGC, Paul McConkey and Natacha Sesko.

C. Potentially Liable Persons (PLPs): Refers to CNGC, Paul McConkey and Natacha Sesko.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

E. Upland Area: Refers to areas of the Site that fall outside the In-Water Area, as generally depicted in Exhibit A.

F. In-Water Area: Refers to the intertidal (areas exposed to air at low tide) and sub-tidal (areas always covered by water) parts of the Site associated with adjacent marine waters, generally located on the northern portion of the Site, as generally depicted in Exhibit A.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the PLPs:

A. The upland portion of the Site is generally located at 1725 Pennsylvania Avenue, Bremerton, Washington 98310 and consists of a total of approximately 3.68-acres with three parcels, which include northern portion of the Penn Plaza Industrial Park, the former Gasworks and Sesko parcels. The Site is bounded by Pennsylvania Avenue to the east, Thompson Avenue to the west, Port Washington Narrows to the north and remainder of the Penn Plaza Industrial Park, which is not a part of the Property to the south. The Site location is depicted in the diagrams attached to this Agreed Order as Exhibit A.

B. The Site is listed on the Department of Ecology’s Hazardous Sites List as “Old Bremerton Gasworks and Sesko Property” with the Facility Site ID No. 2641, and the Site’s hazard ranking is 1 (Department of Ecology, March 1995).

C. Paul and Margaret McConkey are the current property owners of two parcels (3711-000-001-0409 and 3711-000-001-0607) and Natacha Sesko is the current property owner of third parcel (3741-000-022-0101) of the Site as defined in RCW 70.105D.020(17). A number

of warehouse buildings are present on the Site, which are currently being used for light industrial and storage purposes.

D. The Cascade Natural Gas Corporation is a former owner and operator of a facility on the Site as defined in RCW 70.105D.020(17).

E. Based on the results of an initial investigation conducted from August 1993 through April 1994, the Site was listed on Ecology's confirmed and suspected contaminated site list (CSCL) in September 1994. On September 16, 2010, Early Notice Letters were sent out to Paul McConkey and William Sesko informing about this listing (Department of Ecology, August 1993 through April 1994).

F. In early 1995, Ecology conducted a subsequent investigation as a part of the site hazard assessment (SHA) to rank the site. Results of this soil investigations showed elevated levels of polyaromatic hydrocarbons (PAHs), benzo(a)pyrene (1,810 mg/kg), benzo(b)flouranthene (2,720 mg/kg), naphthalene (6,700 mg/kg) and phenathrene (24,400 mg/kg) which exceed the Model Toxics Control Act (MTCA) Method A cleanup levels. Based on these results, the site was ranked using the Washington Ranking Method. The site scored a ranking of 1 out of a possible 5 (Department of Ecology, March 1995).

G. The CNGC owned a portion of the site from approximately 1953 to 1972 and operated a gasification plant from 1953 until sometime between 1955 and 1958. Prior to 1953, the Western Gas Company (WGC) operated a gasification plant on the Site from early 1930s until 1952. During this operation, the WGC's waste disposal practices included dumping of tar-laden wood, tar-covered excelsior and soot from the water gas machine to fill a gully at the edge of the plan; dumping of tar emulsion in shallow its dug at random on the grounds; discharge of effluent (a mixture of water, tar and oil) into Port Washington Bay through a pipe; and other inappropriate handling of gasification waste. In 1952, the Bremerton Gas Company (BGC)

bought some of WGC's assets including the gasworks property and operated the gasification plant for a year before it merged with CNGC in 1953 (Hart Crowser, May 2, 2007; Tupper/Mack/Browser, April 8, 2010).

H. (i) In 2006, the City of Bremerton conducted a Preliminary Upland Assessment of the Site. Eight borings were drilled and a total of seventeen soil samples were collected for chemical analysis (these borings were converted into groundwater monitoring wells). All these soil samples were analyzed for metals, total petroleum hydrocarbons (TPH-gasoline, TPH-diesel and TPH-oil), volatile organic compounds (VOCs) and semivolite organic compounds (SVOCs). Results of this investigation showed elevated levels of arsenic (48.4 mg/kg), naphthalene (2,290 mg/kg), TPH-Gasoline (635 mg/kg), TPH-Diesel (30,200 mg/kg), TPH-Oil (2,900 mg/kg), benzene (1.93 mg/kg), and carcinogenic PAHs (TEQ: 155.5 mg/kg). All of the above contaminant concentrations exceed their respective MTCA Method-A and/or Method-B cleanup levels (GeoEngineers, October 26, 2007).

(ii) As a part of the groundwater investigation, eight groundwater monitoring wells were installed. The depth of groundwater was ranged from 15 to 35 feet below ground surface. Also the groundwater elevation contour map indicated that the groundwater flows in northerly direction towards the Port Washington Narrows (GeoEngineers, October 26, 2007).

(iii) Groundwater samples were collected from eight groundwater monitoring wells. These samples were analyzed for metals, TPH-gasoline, TPH-diesel, TPH-Oil, VOCs and SVOCs. The dissolved concentrations of arsenic (14.2 ug/l and 26 ug/l), lead (18.3 ug/l and 21.6 ug/l) and chromium (90 ug/l – 228 ug/l) exceeded MTCA Method-A cleanup levels. In addition, at several locations TPH-gasoline (2800 ug/l - 10,600 ug/l), TPH-diesel (540 ug/l – 18,500 ug/l), benzene (18.4 ug/l – 950 ug/l), naphthalene (345 ug/l – 5270 ug/l) and cPAHs (0.52 ug/l – 45.24 ug/l) concentrations exceeded MTCA Method-A or Method-B cleanup levels. There was a

isolated hit of carbon tetrachloride (0.66 ug/l), which also exceeded MTCA Method-B cleanup level (GeoEngineers, October 26, 2007).

J. (i) In 2008, the Environmental Protection Agency, Region 10 (EPA) conducted a Targeted Brownfields Assessment of the Site. Seven borings were drilled on the Site and soil samples were collected at every five feet interval from ground surface to a depth of 45-feet. A total of 56-soil soil samples were collected and analyzed for metals, TPH-gasoline, TPH-diesel, TPH-oil, VOCs and SVOCs. Results of this investigation showed elevated levels of TPH-diesel, TPH-oil, naphthalene, benzene, ethylbenzene and cPAHs. The maximum detected concentrations of above contaminants are 36,000 mg/kg, 29,000 mg/kg, 680 mg/kg, 12 mg/kg, 24 mg/kg and 47.51 (TEQ) respectively. All of these concentrations exceed MTCA Method-A or Method-B cleanup levels (Ecology & Environment, August 2009).

(ii) During the above investigation, two of the seven borings were converted into groundwater monitoring wells and groundwater samples were collected from all borings including two monitoring wells. Groundwater samples were analyzed for target analyte list (TAL) metals, TPH-gasoline, TPH-diesel, TPH-oil, VOCs, and SVOCs. The results of groundwater samples collected from two groundwater monitoring wells showed arsenic, chromium, lead, TPH-diesel, and benzene concentrations of 4,100 ug/l, 69,600 ug/l, 8,000 ug/l, 5,100 ug/l, and 70 ug/l respectively. These contaminant concentrations exceed MTCA Method-A cleanup levels. Also elevated levels of arsenic (1,100 ug/l), chromium (1,670,000 ug/l), lead (268,000 ug/l), barium (5,840,000 ug/l), naphthalene (1,800,000 ug/l), benzene (3,100,000 ug/l), TPH-diesel (5,500 ug/l), and number of PAHs were detected which exceeded MTCA Method-A or Method-B cleanup levels (Ecology & Environment, August 2009).

(iii) EPA also collected five sediment samples within the intertidal area. Five boreholes were hand-augered up to a depth of 30 centimeters below ground surface for collecting these sediment samples at low tide. Several product seeps were also noted near sample locations. These samples were analyzed for TAL metals, TPH-gasoline, TPH-diesel, TPH-oil, VOCs and SVOCs. Several SVOCs were detected above screening criteria in all five sediment samples indicating adverse impact on the sediments (Ecology & Environment, August 2009).

VI. ECOLOGY DETERMINATIONS

A. The Cascade Natural Gas Corporation was the “owner” and an “operator” as defined in RCW 70.105D.020(17), of a “facility” as defined in RCW 70.105D.020(5). Paul McConkey and Natasha Sesko are the current property owners of a “facility” as defined in RCW 70.105D.020(5).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued PLP status letters to CNGC, Paul McConkey and Natacha Sesko dated March 5, 2010, pursuant to RCW 70.105D.040, RCW 70.105D.020(21), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that CNGC, Paul McConkey and Natacha Sesko are PLPs under RCW 70.105D.040 and notified the PLPs of this determination by letters dated April 16, 2010.

D. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of

hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLPs take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. The PLPs shall conduct the remedial actions fully described in Exhibit B to this Order. Generally, the PLPs shall develop a draft cleanup action plan (DCAP) for the Site and prior to developing the DCAP, conduct a remedial investigation/feasibility study of uplands and sediments as per the Remedial Investigation/Feasibility Study (RI/FS) Scope of Work, attached as Exhibit B to this Order. Generally the RI/FS tasks include:

UPLANDS

- Installation of additional test pits and/or borings to determine lateral and vertical extent of soils and groundwater contamination.
- Installation of groundwater monitoring wells and performing slug tests.
- Collection and analysis of soil and groundwater samples to determine the nature and extent of contamination.
- Collection of surface water and seep (if identified) samples to determine their impacts on the sediments.
- Conducting a tidal study to determine the extent of tidal influence and its impact on the Site.
- Delineation of impacted areas that may require remedial action.
- Evaluation of remedial alternatives.

- Identification of a preferred remedial alternative for the Site.

SEDIMENTS

- Collection of sufficient number of sediment samples to characterize the overall nature and extent of sediment contamination and potential biological effects in Port Washington Narrows adjacent to the Site.
- Conduct a suite of sediment toxicity tests on synoptic sediment samples.
- Identify specific station locations and chemical and bioassay analysis in detail in an approved Sampling and Analysis Plan.
- Provide a description of the physical characteristics of the site including potentially impacted portions.
- Delineate impacted areas that may require remedial action, identify remedial alternatives, and assess the feasibility of implementing any remedial action.
- Identify whether subsequent investigations are needed to further characterize the nature and extent of contamination. A revised Sampling and Analysis Plan must be submitted for Ecology's review and approval.

HABITAT RESTORATION

- Identify habitat restoration opportunities for both the uplands and sediments.

The Site is being overseen by Ecology and work is being done in an expedited manner under the Governor's Puget Sound Initiative. The initiative focuses on cleaning up contamination as well as restoring Puget Sound. Ecology recognizes that site cleanups can be designed and implemented in a manner that improves habitat values and provides for shoreline restoration in conjunction with remedial actions. While planning the cleanup, and making cleanup decisions, Ecology and CNGC, Paul McConkey and Natacha Sesko will evaluate opportunities to perform remedial actions in a fashion that

coincidentally enhances habitat. Elements of the remedial action will be evaluated for restoration opportunities in consultation with Ecology as plans for cleanup are developed.

B. The PLPs shall perform remedial actions required by this Order according to the schedule included in Exhibit C.

C. The PLPs shall submit to Ecology a progress report the first week of each month regarding the progress of RI/FS work until such time as the PLPs have completed the work required in the RI/FS Work Plan and the development of a DCAP. The monthly progress report shall include work completed to date, problems encountered and how they were resolved, and work scheduled for the subsequent month. Electronic submittals are acceptable.

D. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

B. Remedial Action Costs

The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work

performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The PLPs shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

If Ecology determines that the PLPs have failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the PLPs, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the PLPs' failure to comply with its obligations under this Order, the PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII B (Remedial Action Costs), provided that the PLPs are not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the PLPs shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Panjini Balaraju

Toxics Cleanup Program

PO Box 47600, Olympia, WA 98504

Phone: 360-407-6161

E-Mail: pbal461@ecy.wa.gov

The project coordinator for the PLPs is (please include name, address and telephone number):

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the PLPs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Agreed Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

E. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct

supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

The PLPs shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the PLPs either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the PLPs' progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLPs. The PLPs shall make all reasonable efforts to secure access rights for

those properties within the Site not owned or controlled by the PLPs where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the PLPs shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal. Attached as Exhibit D, is a copy of Ecology's Policy 840, Data Submittal Requirements.

If requested by Ecology, the PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLPs and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII F (Access), Ecology shall notify the PLPs prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with the PLPs.

Ecology shall maintain the responsibility for public participation at the Site. However, the PLPs shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the PLPs prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLPs that do not receive prior Ecology approval, the PLPs shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Bremerton Public Library
612 5th Street North
Bremerton, WA 98337
- b. Department of Ecology
Toxics Cleanup Program
Headquarters Office
300 Desmond Drive SE
Olympia, Washington 98504-7600

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the PLPs shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the PLPs shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the PLPs has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. The PLPs may then request regional management review of the decision. This request shall be submitted in writing to the Headquarters Land and Aquatic Lands Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the PLPs' request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

Ecology may extend the thirty (30) calendar day period for reviewing and commenting on a document by providing oral or written notification to the PLP, prior to expiration of the thirty (30) calendar day period. Ecology will provide an estimate of the time required for completion of its review.

2. The burden shall be on the PLPs to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of the PLPs including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLPs;

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

c. Endangerment as described in Section VIII M (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of PLPs.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLPs written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII L (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

a. Delays in the issuance of a necessary permit which was applied for in a timely manner;

b. Other circumstances deemed exceptional or extraordinary by Ecology; or

c. Endangerment as described in Section VIII M (Endangerment).

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be

formally amended by the written consent of both Ecology and the PLPs. The PLPs shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII J (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

In the event the PLPs determine that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the PLPs may cease such activities. The PLPs shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction the PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLPs' cessation of activities, it may direct the PLPs to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII M (Endangerment), the PLPs' obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in

accordance with Section VIII K (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the PLPs to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the PLPs regarding remedial actions required by this Order, provided the PLPs complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the PLPs without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLPs shall provide a copy of this Order to any prospective

purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or specific federal, state or local requirements that the agency has determined are applicable and that are known at the time of entry of this Order have been identified in Exhibit E.

2. Pursuant to RCW 70.105D.090(1), the PLPs are exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the PLPs shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit E.

The PLPs has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the PLPs determine that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation

from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State to administer any federal law, the exemption shall not apply and the PLPs shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Land Use Restrictions

In the event that a restrictive covenant or other land use restriction will be required under WAC 173-340-440(4), the PLPs shall record a Restrictive Covenant with the office of the Skagit County Auditor within ten (10) days of the completion of the remedial action. The Restrictive Covenant shall restrict future uses of the Site. The PLPs shall provide Ecology with a copy of the recorded Restrictive Covenant within thirty (30) days of the recording date.

R. Indemnification

The PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the Port, its officers, employees, agents, or contractors in entering into and implementing this

Order. However, the PLPs shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon the PLPs' receipt of written notification from Ecology that the PLPs have completed the remedial activity required by this Order, as amended by any modifications, and that the PLPs have complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event the PLPs refuse, without sufficient cause, to comply with any term of this Order, PLPs will be liable for:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: _____

Cascade Natural Gas Corporation

**State of Washington,
Department of Ecology**

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REFERENCES

1. Tupper/Mack/Brower PLLC, April 8, 2010, Cascade Natural Gas Corporation Responses to PLP Notice Letter.
2. Ecology and Environment, August 2009, Final Bremerton Gasworks, Targeted Brownfields Assessment Report, Bremerton, Washington, Prepared for the United States Environmental Protection Agency, Region 10.
3. Ecology and Environment, March 2008, Bremerton, Targeted Brownfields Assessment Sampling and Quality Assurance Plan, Bremerton, Washington, Prepared for the United States Environmental Protection Agency, Region 10.
4. Hart Crowser, May 2, 2007, Historical Characterization and Data Gaps, Old Bremerton Gasworks Property, 1725 Pennsylvania Avenue, Bremerton, Washington, Prepared for the Washington State Department of Ecology.
5. GeoEngineers, October 26, 2007, Preliminary Upland Assessment Report, McConkey/Sesko Site, Bremerton, Washington, Prepared for the City of Bremerton.
6. Department of Ecology, March 1995, Site Hazard Assessment Report, Old Bremerton Gasworks (Formerly Plaza and Sesko Properties), Bremerton, Washington.
7. Department of Ecology, August 1993 through April 1994, Initial Investigation Results, Ecology Inspection Reports and Correspondences, Old Bremerton Gasworks (Formerly Plaza and Sesko Properties), Bremerton, Washington.